IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. WRIT PETITION NO.632 OF 2004

Mr.Prashant Kiran s/o.Shakar Shetty — Petitioner
vs.
The State of Maharashtra & anr. — Respondents

Mrs.Seema Gupta for Mr.A.M.Saraogi for the petitioners.

Mr.A.P.Pol, A.P.P. for the State.

**CORAM : V.R.KINGAONKAR,J.**

**DATED : 28th July, 2006**

**P.C.**

The petitioner filed a complaint before the Additional Chief Metropolitan Magistrate, Borivali against the respondent no.2 for offences punishable under Sections 406 and 420 of the Indian Penal Code. The petitioner alleged that due to cordial relationship and on representation of the respondent no.2, he had parted with amount of Rs.55,000/- which was not repaid. He inferred that he has been cheated and that the offence of criminal breach of trust is also committed by the respondent no.2.

2. The learned Magistrate directed the police to submit report under Section 202 of Cr.P.C. The concerned Police officer did submit the report. The report disclosed that it was only money transaction of civil nature since the amount was borrowed and further that

both the parties had agreed to settle the matter. An undertaking was given by the respondent no.2 before the police officer on 31.01.2002. In view of the police report under Section 202 of the Cr.P.C., the learned Additional Chief Metropolitan Magistrate was pleased to hold that there is no material to proceed against the respondent no.2 and hence dismissed the complaint under Section 203 of the Cr.P.C.

3. Mrs.Seema Gupta, the learned advocate for the petitioner submits that the impugned order is bad in law inasmuch as no opportunity was given to the complainant/petitioner to give further evidence or to contradict the police report. It is further argued that the respondent no.2 did not specifically deny the monetary liability and there is prima facie material to show commission of the alleged offences. I do not agree. Even if the police report is discarded then also there is hardly any material on the face of the complaint to show that offence of cheating is made out. The complaint itself reveals that the petitioner and the respondent no.2 were on friendly terms. Their relations were cordial. It appears that the petitioner had lent certain amount due to cordial relationship and there was no particular inducement held out by the respondent no.2, nor the details of such inducement are stated in the complaint. The offence of cheating requires

"dishonest inducement" as one of its ingredient which has to be proved, prima facie, before issuance of process. The report of Police Officer and the allegations made in the complaint would show that the transaction between the petitioner and the respondent no.2 was of loan. The civil liability of the respondent no.2 may or may not exist but such civil dispute cannot be a subject matter of the criminal proceedings. I do not find any serious error committed by the learned Additional Chief Metropolitan Magistrate while dismissing the complaint. No interference is called for in the impugned order. The petition is, therefore, dismissed. No costs.

**( V. R. KINGAONKAR,J. )**